

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

MUSTAFA FTEJA, *on behalf of himself, FLSA
Collective Plaintiffs and the Class,*

Plaintiff,

v.

NUSRET NEW YORK LLC d/b/a Nusr-et
Steakhouse and NUSRET GÖKÇE, a/k/a “The Salt
Bae,” *jointly and severally* ,

Defendants.

Case No.: 19-cv-00429

**DECLARATION OF C.K. LEE IN SUPPORT OF PLAINTIFF’S MOTION FOR AN
ORDER (1) CONDITIONALLY CERTIFYING SETTLEMENT CLASS AND
COLLECTIVE ACTION, (2) GRANTING PRELIMINARY APPROVAL TO
PROPOSED CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION, (3)
DIRECTING DISSEMINATION OF NOTICE AND RELATED MATERIAL TO THE
CLASS, and (4) SETTING DATE FOR FAIRNESS HEARING AND RELATED DATES**

I, C.K. Lee, declare as follows:

1. I am a partner in the firm of the Lee Litigation Group, PLLC (“LLG”) in New York, New York, and Plaintiff’s counsel herein.
2. I respectfully submit this declaration in support of Plaintiff’s motion requesting the Court to (1) grant preliminary approval of the Settlement Agreement and Release (“Settlement Agreement”) attached as **Exhibit A** hereto, (2) conditionally certify the settlement class under Federal Rule of Civil Procedure 23(b)(3) and 29 U.S.C. § 216(b) for settlement purposes only, (3) approve the proposed Notice of Class Action Settlement (“Proposed Notice”), attached as **Exhibit B** hereto, (4) approve Plaintiff’s proposed schedule for final settlement approval and set a date for the Fairness Hearing and related dates, (5) appoint LLG as Class Counsel (“Class Counsel”) for the settlement class, and (6) appoint Rust Consulting as the Claims Administrator.
3. I make these statements based on personal knowledge and would so testify if called as a witness before the Court.

My Background and Experience

4. I received a BS/BA from the University of Michigan/Ann Arbor, with concentrations in Biology and Chinese Language & Culture. I received a Juris Doctorate degree from The University of Pennsylvania Law School in 1997. I was admitted to the New York bar in 1998. I am also admitted to the bars of the United States Supreme Court, the Second Circuit Court of Appeals, and the United States District Courts for the Eastern, Southern, Western and Northern Districts of New York. I am a member in good standing of each of these bars. I have served as lead counsel in hundreds of wage and hour class and collective actions.

5. Prior to establishing my own firm, I was associated with some of the top firms in New York City, including Clifford Chance, Morrison & Foerster and Schulte Roth & Zabel.

6. Since April 2009, a substantial part of my practice has been engaged in prosecuting wage and hour class and collective action cases.

7. I have been appointed as lead counsel in over 60 wage and hour cases that district courts have certified as class actions and/or collective actions. *See attached list.*

Nature of Plaintiffs' Claims

8. Plaintiff, on behalf of himself and Class Members, alleges that Defendants (i) failed to pay non-exempt, tipped employees the proper minimum wages due to an invalid tip credit; (ii) failed to pay non-exempt, tipped employees the proper overtime hours; (iii) unlawfully retained tips from non-exempt, tipped employees; and (iv) failed to meet the New York Labor Law's requirement on wage statements and wage and hour notices with respect to all non-exempt, tipped employees. Defendants deny all such allegations.

Investigation and Discovery

9. Before filing the Complaint, Plaintiff's Counsel conducted a thorough investigation. This included investigation and legal research on the underlying merits of the class claims, the likelihood of obtaining liquidated damages, the proper measure of damages, and the likelihood of class certification.

10. LLG had in-depth interviews with the named Plaintiff. LLG also obtained documents and data from the named Plaintiff that helped evaluate the risks of the case.

11. Discovery in this case has consisted of reviewing and analyzing hundreds of pages of documentation electronically produced by Defendants, including the employment data

of Plaintiff Fteja, such time sheets and payroll records, and a sample of wage and hour documents for the class. During the course of discovery, Plaintiff's Counsel also received a variety of tip records, wage notices, tip notices, the employee handbook, and other related documents. The documents and samples were analyzed to help Plaintiff's Counsel calculate the alleged damages owed to the named Plaintiff and the Class Members based upon Plaintiff's allegations. In addition to the records produced, Plaintiff's Counsel used assumptions based on the pleadings and the data provided by Defendants to estimate the total amount of damages owed to Plaintiff and the class. Defendants deny that Plaintiff and/or the Class Members are entitled to any damages.

12. Plaintiff's Counsel has provided a benefit to the class and the judicial system by agreeing to cooperate in the prosecution and settlement of this case.

Settlement Negotiations

13. On March 13, 2019 the Parties were referred to the Court-annexed Mediation Program.

14. Plaintiff submitted a detailed mediation statement that explained the claims, noted Defendants' presumed vulnerabilities, potential risk, and explained his damage calculations.

15. On April 23, 2019, the Parties engaged in a full-day in-person mediation with Richard M. Reice, which was unsuccessful and did not result in a settlement.

16. During the months after the mediation session with Richard Reice, the Parties continued to participate in discovery, and eventually agreed to engage in a second, private mediation session with Noel P. Tripp, Esq. of JAMS.

17. On September 18, 2019, the Parties informed the Court of their intention to participate in a private mediation.

18. On September 25, 2019, the Parties engaged in a second mediation session with Noel P. Tripp. Although the session did not result in a settlement in principle, the Parties made significant progress towards a resolution and agreed to meet for a third mediation session, once again with Noel Tripp, in October 2019 to attempt to reach a settlement. Thereafter, the Parties scheduled a third mediation session which took place on October 11, 2019.

19. During the October 11, 2019 mediation session, the Parties reached a settlement in principle. Following additional discussions, the Parties entered into a Term Sheet on October 31,

2019 and, during the months thereafter, continued negotiating the terms of the class settlement, which was memorialized in the formal Settlement Agreement (*See Exhibit A.*)

20. At all times during the settlement negotiation process, negotiations were conducted on an arm's-length basis.

Settlement Agreement

21. A true and correct copy of the Parties' Settlement Agreement is attached as **Exhibit A.**

22. Under the Agreement, all class members will opt-in to the Fair Labor Standards Act ("FLSA") collective action by signing, negotiating, depositing and/or cashing their settlement checks, which contain opt-in acknowledgment language.

23. There are approximately 200 Class Members in this case.

Claims Administration

24. The Claims Administrator will be Rust Consulting.

25. The Claims Administrator's fees will be paid out of the Settlement Fund.

26. Attached as **Exhibit B** hereto is the proposed Notice of Class Action Settlement ("Proposed Notice").

I declare under penalty of perjury, under 28 U.S.C. § 1746, that the foregoing is true and correct.

Dated: March 2, 2020
New York, New York

Lee Litigation Group, PLLC

By: /s/ C.K. Lee
C.K. Lee (CL 4086)
148 West 24th Street, Eighth Floor
New York, New York 10011
Telephone: 212-465-1188

List of Class Cases

1. Mendez v. Pizza On Stone, LLC et al	11-cv-06316	SDNY
2. Khamsiri v. George & Frank's Japanese Noodle Rest Inc. et al	12-cv-00265	SDNY
3. Xiong v. XpresSpa JFK Terminal 7, LLC	09-cv-01730	EDNY
4. Sanjaya et al v. Inakaya USA, Inc. et al	12-cv-04500	SDNY
5. Sierra v. Triple J. Associates of Queens, Inc. et al	12-cv-04462	EDNY
6. Flores et al v. KC 53 LLC et al	12-cv-08095	SDNY
7. Mosquea v. Oasis Outsourcing II et al.	12-cv-8099	SDNY
8. Viafara v. MCIZ Corp. et al	12-cv-7452	SDNY
9. Shahriar v. Sukhmani Inc. et al	13-cv-03823	SDNY
10. Romero v. La Revise Associates, L.L.C. et al	12-cv-08324	SDNY
11. Lin et al v. Benihana National Corp. et al	10-cv-01335	SDNY
12. Trinidad v. Pret A Manger (USA) Limited, et al.	12-cv-6094	SDNY
13. Bravo v. Established Burger One L.L.C. et al.	12-cv-9044	SDNY
14. Sanchez v. JMP Ventures, L.L.C. et al	13-cv-07264	SDNY
15. Carillo v. 27-39 East 30th Rest. Corp., et al.	13-cv-4491	SDNY
16. Hussein et al. v. J. Caldwell Corp. et al.	13-cv-2685	SDNY
17. Ortiz et al v. Chop't Creative Salad Company LLC, et al	13-cv-0254	SDNY
18. Guaman v. 5 "M" Corp. et al.	13-cv-3820	SDNY
19. Alvarado v. Dublin 6 at 115 Broadway Inc. et al	14-cv-03939	SDNY
20. Santana v. Fishlegs LLC et al	13-cv-01628	SDNY
21. Mohamed, et al. v. Ess-A-Bagel Inc., et al.	13-cv-8726	SDNY
22. Yuzary, et al. v. HSBC Bank USA N.A., et al.	12-cv-3693	SDNY
23. Long et al v. HSBC USA Inc. et al	14-cv-6233	SDNY
24. Hernandez v. Bare Burger Dio, Inc., et al.	12-cv-7794	SDNY
25. Maisanche v. Paola Painting & Renovation LLC, et al.	511960/2015	Kings
26. Corte v. Fig & Olive Founders LLC, et al	14-cv-7186	SDNY
27. Perez v. Dos Toros, LLC, et al	14-CV-9183	SDNY
28. Cabrera v. Glenoak Enterprises LLC, et al	14-cv-5599	EDNY
29. Martinez et al v. Blockhead's Burritos	15-cv-3294	SDNY
30. Mohamed v. Sophie's Cuban Cuisine Inc., et al.	14-CV-3099	SDNY
31. Solorio v. 142 Mercer Street, LLC d/b/a Lure Fishbar, et al.	15-cv-5817	SDNY
32. Galvez v. Lucky Pearl, LLC et al	15-cv-05177	SDNY
33. Hernandez v. McGee's Bar & Grill, Inc., et al.	15-cv-06067	SDNY
34. Gonzalez et al v. Famiglia-Debartolo, LLC et al	13-cv-08468	SDNY
35. Asencio v. Arturo's Park Inc., et al.	15-cv-9186	SDNY
36. Zamora et al v. One Fifty Fifty Seven Corp. et al	14-cv-08043	SDNY
37. Montenegro, et al v. XpresSpa at Term. 4 JFK LLC, et al	15-cv-3539	SDNY
Riedel v. Acqua Ancien Bath New York LLC d/b/a Aire Ancient		
38. Baths, et al.	14-cv-7238	SDNY
39. Jin v. Spa Castle, Inc., et al.	14-CV-5545	EDNY
40. Barcenas v. Luma Rest, Inc. d/b/a Lusardi's, et al.	15-CV-10043	SDNY

41.	Dipalma v. New Organico, Inc.	15-cv-9753	SDNY
	Metodio v. Down and Dirty Tacos & Tequila Bar Meatpacking		
42.	LLC, et al.	15-cv-08754	SDNY
43.	Santiago v. Rivka, Inc. d/b/a Café Mogador, et al.	15-cv-9184	SDNY
44.	Mariani, et al. v. OTG Management, Inc., et al.	16-CV-1751	EDNY
45.	Bairon Orellana et al - v. - Pio Pio NYC, Inc. et al	155941/2016	NY
46.	Ruiz, et al. v. Force Services, LLC, et al.	16-cv-6729	SDNY
47.	Salazar, et al. v. Spectrum of Creations, Inc., et al.	16-CV-0653	SDNY
48.	Andreescu v. Bravo Brio Restaurant Group, Inc.	16-CV-6508	SDNY
49.	Vasquez v. GRK 451 Lexington Ave LLC, et al.	16-cv-7305	SDNY
50.	Iturbide v. Cho Familia Dynastia, Inc. d/b/a Flor de Mayo, et al	17-CV-596	SDNY
51.	Maisanche v. Paola Painting & Renovation LLC, et al.	16-cv-7697	SDNY
52.	Huerta v. West 62 Operating LLC, et al.	16-CV-3876	SDNY
53.	Jaigua v. Vordonia Contracting & Supplies Corp., et al.	16-cv-6538	EDNY
54.	Gonzalez v. PB Hudson LLC, et al.	17-CV-2010	SDNY
55.	Gomez v. Kitchenette 123 Inc., et al.	16-cv-3302	SDNY
56.	Lucia Marett v. Palm Restaurant Inc.	16-CV -9381	SDNY
57.	Rodriguez v. Park It Management Corp., et al.	17-CV-4995	SDNY
58.	Gomez v. Terri Vegetarian LLC d/b/a Terri, et al.	17-cv-00213	SDNY
59.	Jara v. Felidia Restaurant, Inc., et al.	17-CV-9622	SDNY
60.	Escobar et al v. Pret A Manger (USA) Limited et al	17-cv-05227	SDNY
61.	Bravo v. Fourth on Fifth LLC, et al.	17-cv-7003	SDNY
62.	Falcon v. Bogopa Service Corp. et al	17-CV-6230	SDNY
63.	Garcia Morales v. New Indian Foods, LLC, et al.	18-cv-3401	SDNY
	Moreno Flores, et al. v.47th St. Food, Inc. d/b/a Blake & Todd, et		
64.	al.	18-cv-4281	SDNY
	Monter, et al. v. AP & SS Restaurant Group LLC d/b/a Sea Fire		
65.	Grill, et al.	18-CV-1859	SDNY
66.	Quic v. Dig Inn Restaurant Group, LLC, et al.	516484/2018	Kings